

37 Am. Jur. 2d Fraud and Deceit § 135

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Fraud and Deceit

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IV. False Representations

F. Intent to Deceive, or to Induce Reliance; Knowledge of Falsity

4. Intent or Knowledge as Relating to Relief

§ 135. Rescission

[Topic Summary](#) | [Correlation Table](#) | [References](#)

West's Key Number Digest

West's Key Number Digest, [Fraud](#) 4, 13(2), 13(3)

Forms

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 7, 8](#) (Complaint, petition, or declaration—For rescission of agreement induced by fraud—General form)

[Am. Jur. Pleading and Practice Forms, Fraud and Deceit §§ 9 to 16](#) (Complaint, petition, or declaration—For rescission of agreement induced by fraud—Specific acts of fraud)

False representations made with knowledge of their falsity, with intent to deceive, or with what is regarded in law as equivalent to such knowledge, constitute, of course, such fraud as will authorize the rescission of a contract.¹ However, many cases have distinguished between the willful or reckless misrepresentation essential to the maintenance of an action for deceit, and the misrepresentation, negligent or innocent, that will ordinarily lay a sufficient basis for rescission in equity.² Thus, many courts lay down the rule that misrepresentation of material facts may be a ground for rescinding or avoiding a contract even though there is no actual fraud³ or intent to deceive or misrepresent,⁴ and even though the statements are innocently made⁵ without knowledge of their falsity.⁶ Such a representation is considered to be constructively fraudulent because of its effect of imposing on and deceiving the person to whom it is made.⁷ Where there is a relationship of trust and confidence, the transaction may be rescinded even though the false statement was made in good faith.⁸

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Footnotes

- 1 [Kackley v. Webber](#), 310 Ky. 285, 220 S.W.2d 587, 9 A.L.R.2d 500 (1949).
- 2 [Monier v. Guaranty Trust Co. of New York](#), 82 F.2d 252, 104 A.L.R. 912 (C.C.A. 2d Cir. 1936). While innocent misrepresentations are sufficient for rescission, they cannot be the basis of a recovery of damages for fraud. [Sheridan Drive-In, Inc. v. State](#), 16 A.D.2d 400, 228 N.Y.S.2d 576 (4th Dep't 1962).
- 3 [General Finance Corporation v. Keystone Credit Corporation](#), 50 F.2d 872 (C.C.A. 4th Cir. 1931); [Hutson v. Hutson](#), 168 Md. 182, 177 A. 177 (1935); [Ellenburg v. Edward K. Love Realty Co.](#), 332 Mo. 766, 59 S.W.2d 625 (1933).
- 4 [Junius Const. Co. v. Cohen](#) (State Report title: *Junius Const. Corp. v. Cohen*), 257 N.Y. 393, 178 N.E. 672 (1931).
- 5 [Smith v. Richards](#), 38 U.S. 26, 10 L. Ed. 42, 1839 WL 4314 (1839); [Metropolitan Life Ins. Co. v. Becraft](#), 213 Ind. 378, 12 N.E.2d 952, 115 A.L.R. 93 (1938); [Hudspeth v. Zorn](#), 292 S.W.2d 271 (Mo. 1956). A suit in equity to rescind a contract for innocent misrepresentation is one sounding in "fraud." [Horne v. Timbanard](#), 6 Ariz. App. 518, 434 P.2d 520 (1967).
- 6 [Kroninger v. Anast](#), 367 Mich. 478, 116 N.W.2d 863 (1962).
- 7 [Pacific Finance Corp. v. McGowan](#), 105 Cal. App. 216, 287 P. 139 (2d Dist. 1930).
- 8 [Morgan v. Owens](#), 228 Ill. 598, 81 N.E. 1135 (1907); [Myler v. Fidelity Mut. Life Ins. Co. of Philadelphia](#), 1917 OK 371, 64 Okla. 293, 167 P. 601 (1917).

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